

Is Regulating the Internet Good or Bad In the Long Run?

(01/19/2021)

A volcanic issue already erupting is the issue as to whether regulation of the internet is a good or bad thing. Proponents say that the internet has become a demonic nation unto itself, run by a small group of elite dictators. Others say that the internet is the guarantee of free speech and a free press; the modern version of the New England Town Square.

Aside from one's political opinions about the internet, the deeper issue is whether indeed it can be regulated and, if so, how? There has been much debate about Section 230(c)(2) providing so-called "Good Samaritan" protection from civil liability for "operators of interactive computer services in the removal or moderation of third-party material they deem obscene or offensive, even of constitutionally protected speech, as long as it is done in good faith." [En.wikipedia.org Section 230](https://en.wikipedia.org/wiki/Section_230). Section 230 is found in the Communication Decency Act. Big Tech has sought and received protection for its excesses ever since its birth. The internet, which grew out of need for the military to communicate as well as archive and retrieve its information, has now become a headless monster which is capable of being manipulated by remarkably offensive voices, while at the same time demonstrating the propensity to mold the opinions of its participants.

Newton Minow once called television a "vast wasteland". The internet has made the famous Minow quote look quaint, as the electronic media seeks to exercise worldwide international shaping of opinions, all in the image of a very small group of people.

Typically, there have been two ways that the government has sought to reign in tyrants like the internet: (1) Outright Regulation. Regulation of utilities and monopolists has a long and storied history in this country. The Sherman Act, which was a criminal statute, was followed later by the Clayton Act, which provided civil remedies. Sections 1 and 2 of the Antitrust Laws were intended to prevent monopoly and restraint of trade, respectively. Over the years, the antitrust laws have been watered down by court decisions requiring not only monopoly power, but also various tests for standing that can be very difficult to satisfy. There was also a change in economic thinking. At one time, the Standard Oil cartel was considered to be evil. Now, big business is much more controlling than Standard Oil ever was but is thought to be good for international trade. Standard Oil was a vertical monopoly wherein it controlled everything from the oil fields to the delivery of petroleum. We see less of vertical monopoly today and more of the horizontal sort, where an entire industry may be dominated by the monopolist, such as Facebook. (2) Government Action. At some point, an industry or enterprise may become so big and powerful that it fulfills a government function. That might be because the government encourages or permits its duties to be carried out by a private enterprise, or simply because of the pervasiveness of the tentacle-like structure of private enterprise. In those instances, the business of the cartel is considered to be a "state actor" or one acting under "color of state law". When the syndicate, as such enterprises used to be called, performs a state function it would be subject to the same obligations to protect the individual as the

government. If the government cannot clamp down on free speech and must permit an open forum, then so must government stand-in.

Today, few people know of Ida Tarbell, an American investigative journalist, who was known as one of the leading “muckrakers” of her time. She was born in 1857 in Amity Township, Pennsylvania. Her 19-part series in McClure’s rewrote the book on what came to be known as “investigative journalism”. There are those who say that Ida Tarbell’s work was responsible for breaking up the Standard Oil monopoly. She was even assisted in her work by Mark Twain. The Mark Zuckerberg of her day was none other than John D. Rockefeller, Sr. Rockefeller controlled not only the production of oil and gas, but also its delivery. The kind of work that was done by Ida Tarbell to expose John Rockefeller’s excesses has not yet been performed in connection with the shadowy figures behind the internet.

Everyone knows that Google runs the show. How we advertise, who may have a platform on Google, what is sold and where depends upon the mysterious Google “algorithms”. What the connection is between Google and those who profitably exploit the search engine is little known.

If we are going to make a rational and informed decision about whether to and how to regulate the internet, we need to have a national discussion about how not only to address the power of Big Tech, but also whether there is a rational system of behavior that can be enforced.

It is a crazy world when Twitter can say that it does not approve of the speech of Politician A, while permitting Politician B, such as Khomeini of Iran, to call for the death and destruction of another people.

A look at history would serve us well. We know the effects of breaking up big monopoly in this country. Generally speaking, it has opened up competition and been a self-regulated mechanism. If Google did not effectively entirely control access to the internet, there would be many more choices for consumers to make about the services and speech they wish to engage. Regulation of hate speech is a separate issue, albeit related to monopoly power. Monopolists are hard to control because of their power and profits, while smaller groups are more easily managed in terms of behavioral extremes.

Once we break up the monopolies by using the antitrust laws the way that Theodore “Teddy” Roosevelt did, we have a better chance of tackling the ethical and constitutional problems connected with the management of behavior that may be so extreme that it cannot be defined as speech.

We are in for a long and rocky road to control the internet and its more damaging manifestations. However, if we fail to make an effort to control these monopolies, then they will control us.

*Clifford A. Rieders, Esquire
Rieders, Travis, Humphrey,
Waters & Dohrmann
161 West Third Street
Williamsport, PA 17701
(570) 323-8711 (telephone)
(570) 323-4192 (facsimile)*

Cliff Rieders is a Board-Certified Trial Advocate in Williamsport, is Past President of the Pennsylvania Trial Lawyers Association and a past member of the Pennsylvania Patient Safety Authority. None of the opinions expressed necessarily represent the views of these organizations.